



# भारत का राजपत्र The Gazette of India

असाधारण  
EXTRAORDINARY

पार्ट II—सेक्शन 2

PART II—Section 2

आधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 54]  
No. 54]

नई दिल्ली, बृहस्पति, दिसम्बर 22, 1983/पौष 1, 1905  
NEW DELHI, THURSDAY, DECEMBER 22, 1983/PAUSA 1, 1905

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन  
के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed  
as a separate compilation

## RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 22nd December, 1983:—

BILL No XXXVII OF 1983

*A Bill further to amend the Monopolies and Restrictive Trade Practices Act, 1969, and the Companies Act, 1956*

BE it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Monopolies and Restrictive Trade Practices (Amendment) Act, 1983.

Short  
title and  
com-  
mence-  
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any amendment made by any provision of this Act to the commencement of the Monopolies and Restrictive Trade Practices (Amendment) Act, 1983 shall be construed as a reference to the commencement of that provision.

## PART I

AMENDMENTS TO THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969

2. Throughout the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the principal Act),—

Substitu-  
tion of  
certain  
expres-  
sions.

(a) for the expressions "Director" and "Registrar" wherever they occur, the expression "Director General" shall be substituted, and such consequential changes as the rules of grammar may require, shall be made for the purpose of effecting such substitution;

(b) for the words "by notification in the Official Gazette", wherever they occur, the words "by notification" shall be substituted.

**Amend-  
ment of  
section 2.**

3. In section 2 of the principal Act,—

(1) for clause (c), the following clause shall be substituted namely:—

“(c) “Director General” means the Director General of Investigation and Registration appointed under section 8, and includes any Additional, Joint, Deputy or Assistant Director General of Investigation and Registration appointed under that section;”;

(2) in clause (d),—

(a) in the proviso, for the words “relevant year”, wherever they occur, the words “relevant period” shall be substituted;

(b) for *Explanation IV*, the following *Explanation* shall be substituted, namely:—

“*Explanation IV*.—In determining, with reference to the features specified in sub-clause (ii), (iii) or (iv), as the case may be, the question as to whether an undertaking is or is not a dominant undertaking, regard shall be had to—

(i) the average annual production of the goods, or the average annual value of the services provided, by the undertaking during the relevant period; and

(ii) the figures published by such authority as the Central Government may, by notification, specify, with regard to the total production of such goods made, or the total value of such services provided, in India or any substantial part thereof during the relevant period.”;

(c) for *Explanations V* and *VI*, the following *Explanations* shall be substituted, namely:—

“*Explanation V*.—In determining the question as to whether an undertaking is or is not a dominant undertaking in relation to any goods supplied, distributed or controlled in India, regard shall be had to the average annual quantity of such goods supplied, distributed or controlled in India by the undertaking during the relevant period.

*Explanation VI*.—For the purposes of this clause, “relevant period” means the period of three calendar years immediately preceding that calendar year which immediately precedes the calendar year in which the question arises as to whether an undertaking is or is not a dominant undertaking.”;

(3) after clause (d), the following clause shall be inserted, namely:—

“(da) “financial institution” means,—

(i) a public financial institution specified in or under section 4A of the Companies Act, 1956;

(ii) a State Financial, Industrial or Investment Corporation;

38 of 1959.

(iii) the State Bank of India or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959;

(iv) a nationalised bank, that is to say, a corresponding new bank as defined in section 2 of,—

5 of 1970.

(i) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; or

40 of 1980.

(ii) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;

67 of 1972.

(v) the General Insurance Corporation of India established in pursuance of the provisions of section 9 of the General Insurance Business (Nationalisation) Act, 1972;

(vi) the Industrial Reconstruction Corporation of India; or

(vii) any other institution which the Central Government may, by notification, specify in this behalf;'

(4) for clause (e), the following clause shall be substituted, namely:—

3 of 1930.

'(e) "goods" means goods as defined in the Sale of Goods Act, 1930, and includes,—

(i) products manufactured, processed or mined in India;

(ii) shares and stocks;

(iii) in relation to goods supplied, distributed or controlled in India, goods imported into India;'

(5) after clause (ee), the following clause shall be inserted, namely:—

'(ef) "group" means a group of—

(i) two or more individuals, associations of individuals, firms, trusts, trustees or bodies corporate (excluding financial institutions), or any combination thereof, which exercises, or is established to be in a position to exercise, control, directly or indirectly, over any body corporate, firm or trust; or

(ii) associated persons.

*Explanation.*—For the purposes of this clause—

(I) a group of persons who are able, directly or indirectly, to control the policy of a body corporate, firm or trust, without having a controlling interest in that body corporate, firm or trust, shall also be deemed to be in a position to exercise control over it;

## (II) "associated persons"—

(a) in relation to a director of a body corporate, means—

(i) a relative of such director, and includes a firm in which such director or his relative is a partner;

(ii) any trust of which any such director or his relative is a trustee;

(iii) any company of which such director, whether independently or together with his relatives, constitutes one-fourth of its Board of directors;

(iv) any other body corporate, at any general meeting of which not less than one-fourth of the total number of directors of such other body corporate are appointed or controlled by the director of the first mentioned body corporate or his relative, whether acting singly or jointly;

(b) in relation to the partner of a firm, means a relative of such partner and includes any other partner of such firm; and

(c) in relation to the trustee of a trust, means any other trustee of such trust;

(III) where any person is an associated person in relation to another, the latter shall also be deemed to be an associated person in relation to the former;

(6) in clause (g),—

(a) for the word "one half" wherever it occurs, the word "one-fourth" shall be substituted;

(b) for sub-clause (iii), the following sub-clause shall be substituted, namely:—

"(iii) where the undertakings are owned by bodies corporate,—

(a) if one body corporate manages the other body corporate, or

(b) if one body corporate is a subsidiary of the other body corporate, or

(c) if the bodies corporate are under the same management, or

(d) if one body corporate exercises control over the other body corporate in any other manner;"

(c) in sub-clause (v), for the words "group of persons", the words "by the same group" shall be substituted;

(d) in *Explanation I*,—

(i) in the opening portion, for the words "two undertakings, owned by bodies corporate.", the words "two bodies corporate," shall be substituted;

(ii) in clause (vi), for the words "same body corporate or bodies corporate belonging to a group, holding not less than one-third of the equity shares", the words "same body corporate or bodies corporate belonging to a group, holding, whether independently or along with its or their subsidiary or subsidiaries, not less than one-fourth of the equity shares" shall be substituted;

(iii) in clauses (vii) and (viii), for the words "with respect to any matter relating to", the words "in relation to" shall be substituted;

(e) the *Explanation* below the *Illustration* shall be omitted;

(7) in clause (i),—

(a) in sub-clause (i), for the words "maintaining prices", the words "maintaining the prices of goods or charges for the services" shall be substituted;

(b) after sub-clause (iii), the following sub-clauses shall be inserted, namely:—

"(iv) increasing unreasonably,—

(a) the cost of production of any goods; or

(b) charges for the provision, or maintenance, of any services;

(v) increasing unreasonably,—

(a) the prices at which goods are, or may be, sold or re-sold, or the charges at which the services are, or may be, provided; or

(b) the profits which are, or may be, derived by the production, supply or distribution (including the sale or purchase) of any goods or by the provision of any services;

(vi) preventing or lessening competition in the production, supply or distribution of any goods or in the provision or maintenance of any services by the adoption of unfair methods or unfair or deceptive practices;"

(8) for clause (j) and the *Explanations* thereto, the following clauses shall be substituted, namely:—

'(j) "notification" means a notification published in the Official Gazette;

(ja) "owner", in relation to an undertaking, means an individual, Hindu undivided family, body corporate or other association of individuals, whether incorporated or not, or trust (whether public or private or whether religious or charitable) who or which owns or controls, the whole or substantially the whole of such undertaking, and includes any associated person who is a constituent of a group and who has the ultimate control over the affairs of such undertaking;"

(9) clause (n) shall be omitted;

(10) to clause (q), the following proviso shall be added, namely:—

“Provided that, after the commencement of the Monopolies and Restrictive Trade Practices (Amendment) Act, 1983, there shall be included in every scheme of finance, the estimated capital outlay which would be needed to give effect to the scheme;”;

(11) in clause (r), for the words “banking, insurance, transport”, the words “banking, financing, insurance, transport, processing” shall be substituted;

(12) for clause (v), the following clause shall be substituted, namely:—

“(v) “undertaking” means an enterprise which is, or has been, or is proposed to be, engaged in the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, either directly or through one or more of its units or divisions, whether such unit or division is located at the same place where the undertaking is located or at a different place or at different places.

*Explanation I.*—In this clause,—

(a) “article” includes a new article and “service” includes a new service;

(b) “unit”, or “division”, in relation to an undertaking includes,—

(i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;

(ii) any branch or office established for the provision of any service.

*Explanation II.*—For the purposes of this clause, a body corporate, which is, or has been, engaged only in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate shall be deemed to be an undertaking.

*Explanation III.*—For the removal of doubts, it is hereby declared that an investment company shall be deemed, for the purposes of this Act, to be an undertaking;”;

(13) in clause (w), the words “or for renewals, or diminution in value” shall be omitted;

(14) in clause (x), for the words “sells the goods to any person for the purpose of resale”, the words “sells the goods, either in bulk or in large quantities, to any person for the purposes of re-sale, whether in bulk or in the same or smaller quantities” shall be substituted.



4. After section 2 of the principal Act, the following section shall be inserted, namely:—

Insertion  
of new  
section  
2A.

“2A. If any question arises as to whether,—

Power of  
Central  
Govern-  
ment to  
decide  
certain  
matters.

(a) two or more individuals, trustees, associations of individuals, firms or bodies corporate or any combination thereof, constitute, or fall within, a group, or

(b) two or more undertakings are inter-connected undertakings within the meaning of this Act, or

(c) two or more bodies corporate are under the same management,

the Central Government or where the Board of Company Law Administration, constituted under section 10E of the Companies Act, 1956, is, by notification, authorised so to do by the Central Government, that Board, shall decide such question, after giving to the persons concerned a reasonable opportunity of being heard.”

1 of 1956.

5. In section 3 of the principal Act,—

Amend-  
ment of  
section 3.

(i) after clause (e), the following clause shall be inserted, namely:—

“(f) any undertaking owned by a co-operative society formed and registered under any Central, Provincial or State Act relating to co-operative societies.”;

(ii) after clause (f), as so inserted, the following *Explanation* shall be inserted, namely:—

“*Explanation.*—In determining, for the purposes of clause (c), whether or not any undertaking is owned or controlled by a corporation, the shares held by financial institutions shall not be taken into account.”.

6. In section 6 of the principal Act,—

Amend-  
ment of  
section 6.

(i) after sub-section (3), the following sub-sections shall be inserted, namely:—

“(3A) Where any such casual vacancy occurs in the office of the Chairman of the Commission, the seniormost member of the Commission, holding office for the time being, shall discharge the functions of the Chairman until a person appointed to fill such vacancy assumes the office of the Chairman of the Commission.

(3B) When the Chairman of the Commission is unable to discharge the functions owing to absence, illness or any other cause, the seniormost member of the Commission, if authorised so to do by the Chairman in writing, shall discharge the func-

tions of the Commission until the day on which the Chairman resumes the charge of his functions.”;

(ii) in sub-section (7), for the words “every member”, the words “every other member” shall be substituted;

(iii) in sub-section (8), for the words “Any member”, the words “The Chairman or any member” shall be substituted.

Substitution of section 8.

7 For section 8 of the principal Act, the following section shall be substituted, namely:—

Appointment of Director General, etc., and staff of the Commission.

“8. (1) The Central Government may, by notification, appoint a Director General of Investigation and Registration, and as many Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration as it may think fit, for making investigation for the purposes of this Act and for maintaining a Register of agreements subject to registration under this Act and for performing such other functions as are, or may be, provided by, or under, this Act.

(2) The Director General may, by written order, authorise one of the Additional, Joint, Deputy or Assistant Directors General to function as the Registrar of agreements subject to registration under this Act.

(3) Every person authorised to function as the Registrar of agreements and every Additional, Joint, Deputy or Assistant Director General shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director General.

(4) The Central Government may provide the staff of the Commission and may, in addition, make provisions for the conditions of service of the Director General, Additional, Joint, Deputy or Assistant Director General and of the members of the staff of the Commission.

(5) The conditions of service of the Director General or any Additional, Joint, Deputy or Assistant Director General or of any member of the staff of the Commission shall not be varied to his disadvantage after his appointment.”

Substitution of section 11.

8. For section 11 of the principal Act, the following section shall be substituted, namely:—

Investigation by Director General before issue of process in certain cases.

“11 (1) Where any complaint is received by the Commission under sub-clause ( ) of clause (a) of section 10, it may, before issuing any process requiring the attendance of the person complained against, by an order, require the Director General to make, or cause to be made a preliminary investigation in such manner as it may direct and submit a report to the Commission to enable it to satisfy itself as to whether or not the complaint requires to be inquired into.

(2) The Director General may, upon his own knowledge or information or on a complaint made to him, make, or cause to be made, a preliminary investigation in such manner as he may think fit to enable him to satisfy himself as to whether or not an application



should be made by him to the Commission under sub-clause (iii) of clause (a) of section 10.

(3) For the purpose of conducting the preliminary investigation under sub-section (1), or sub-section (2), as the case may be, the Director General or any other person making the investigation shall have the same powers as may be exercised by an Inspector under sub-section (2) of section 44.

(4) Any order or requisition made by a person making an investigation under sub-section (1), or sub-section (2), shall be enforced in the same manner as if it were an order or requisition made by an Inspector appointed under section 240 or section 240A of the Companies Act, 1956, and any contravention of such order or requisition shall be punishable in the same manner as if it were an order or requisition made by an Inspector appointed under the said section 240 or section 240A."

1 of 1956.

9. In section 12 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

Amendment of section 12.

"(5) Where, during any inquiry under this Act, the Commission has any grounds to believe that any books or papers of, or relating to any undertaking in relation to which such inquiry is being made or which the owner of such undertaking may be required to produce in such inquiry, are being, or may be, destroyed, mutilated, altered, falsified or secreted, it may, by a written order, authorise any officer of the Commission to exercise the same powers of entry, search and seizure in relation to the undertaking, or the books or papers, aforesaid as may be exercised by the Director General while holding a preliminary investigation under section 11."

10. After section 12 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 12A, 12B and 12C.

"12A. (1) Where, during an inquiry before the Commission, it is proved, whether by the complainant, Director General, any trader or class of traders or any other person, by affidavit or otherwise, that any undertaking or any person is carrying on, or is about to carry on, any monopolistic or any restrictive, or unfair, trade practice and such monopolistic or restrictive, or unfair, trade practice is likely to affect prejudicially the public interest or the interest of any trader, class of traders or traders generally or of any consumer or consumers generally, the Commission may, for the purposes of staying or preventing the undertaking or, as the case may be, such person from causing such prejudicial effect, by order, grant a temporary injunction restraining such undertaking or person from carrying on any monopolistic or restrictive, or unfair, trade practice until the conclusion of such inquiry or until further orders.

Power of the Commission to grant temporary injunctions.

(2) The provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908, shall, as far as may be, apply to a temporary injunction issued by the Commission under this section, as they apply to a temporary injunction issued by a civil court, and any reference in any such rule to a suit shall be construed as a reference to an inquiry before the Commission.

5 of 1908

Power of  
the Com-  
mission  
to award  
compen-  
sation.

12B. (1) Where, as a result of the monopolistic or restrictive, or unfair, trade practice, carried on by any undertaking or any person, any loss or damage is caused to the Central Government, or any State Government or any trader or class of traders or any consumer, such Government or, as the case may be, trader or class of traders or consumer may, without prejudice to the right of such Government, trader or class of traders or consumer to institute a suit for the recovery of any compensation for the loss or damage so caused, make an application to the Commission for an order for the recovery from that undertaking or owner thereof or, as the case may be, from such person, of such amount as the Commission may determine, as compensation for the loss or damage so caused.

(2) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Commission, make an application, under that sub-section, for and on behalf of, or for the benefit of, the persons so interested, and thereupon the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908, shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Commission and the order of the Commission thereon.

5 of 1908.

(3) The Commission may, after an inquiry made into the allegations made in the application filed under sub-section (1), make an order directing the owner of the undertaking or other person to make payment, to the applicant, of the amount determined by it as realisable from the undertaking or the owner thereof, or, as the case may be, from the other person, as compensation for the loss or damage caused to the applicant by reason of any monopolistic or restrictive, or unfair, trade practice carried on by such undertaking or other person.

(4) Where a decree for the recovery of any amount as compensation for any loss or damage referred to in sub-section (1) has been passed by any court in favour of any person or persons referred to in sub-section (1) or, as the case may be, sub-section (2), the amount, if any, paid or recovered in pursuance of the order made by the Commission under sub-section (3) shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, be executable for the balance, if any, left after such set off.

5 of 1908.

Enforcement  
of the  
order made  
by the  
Commission  
under sec-  
tion 12A  
or 12B

12C. Every order made by the Commission under section 12A granting a temporary injunction or under section 12B directing the owner of an undertaking or other person to make payment of any amount, may be enforced by the Commission in the same manner as if it were a decree or order made by a court in a suit pending therein and it shall be lawful for the Commission to send in the event of its inability to execute it, such order to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situated, or

(b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated,

and thereupon the court to which the order is so sent shall execute the order as if it were a decree or order sent to it for execution.”.

11. After section 13 of the principal Act, the following section shall be inserted, namely:—

“13A. (1) The Commission may, if it has any reasonable cause to believe that any person has omitted or failed to comply with any order made by it under this Act or any obligation imposed on him by or under any order made by the Commission under this Act, authorise the Director General or any officer of the Commission to make an investigation into the matter and the Director General, or the officer so authorised, may, for the purpose of making such investigation, exercise all or any of the powers conferred on the Director General by section 11.

(2) On the conclusion of the investigation, the Director General, or, as the case may be, the officer so authorised, shall submit to the Commission a report of the investigation to enable the Commission to take such action in the matter as it may think fit.”.

12. In section 14 of the principal Act, for the words “monopolistic or restrictive trade practice, or both, relating to the production, supply,” the words “monopolistic, restrictive, or unfair, trade practice, relating to the production, storage, supply,” shall be substituted.

13. In section 18 of the principal Act, in clause (c) of sub-section (1), the following shall be inserted at the end, namely:—

“and subject to any general or special direction given, or condition imposed, by the Commission, a member, to whom any powers or functions are so delegated, shall exercise such powers or discharge those functions in the same manner and with the same effect as if they had been conferred on such member directly by this Act and not by way of delegation and any order or other act or thing made or done by such member in pursuance of the power or function so delegated shall be deemed to be an order or other act or thing made or done, by the Commission.”.

14. In section 19 of the principal Act, after the words “a restrictive trade practice”, the words “or an unfair trade practice, as the case may be,” shall be inserted.

15. In section 20 of the principal Act,—

(i) in clause (a), for the words “its own assets”, wherever they occur, the words “the assets of such undertaking” shall be, and shall be deemed always to have been, substituted;

(ii) in clause (b), and in the *Explanation*, for the words “its assets”, wherever they occur, the words “the assets of such undertaking” shall be, and shall be deemed always to have been, substituted.

Insertion of new section 13A.

Power of the Commission to cause investigation to find out whether or not orders made by it have been complied with.

Amendment of section 14.

Amendment of section 18.

Amendment of section 19.

Amendment of section 20.

Amend-  
ment of  
section  
21.

16. In section 21 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “where an undertaking”, the words “where the owner of an undertaking” shall be substituted;

(ii) for the words “expand its activities”, the words “expand the activities of such undertaking” shall be substituted;

(iii) for the words “it shall”, the words “such owner shall” shall be substituted;

(iv) for the words “its intention”, the words “his intention” shall be substituted;

(b) in sub-section (2),—

(i) for the words “no undertaking”, the words “no owner of an undertaking” shall be substituted;

(ii) for the words “any proposal for its substantial expansion”, the words “any proposal for the substantial expansion of such undertaking” shall be substituted;

(c) in clause (a) of sub-section (3), for the words “call upon the undertaking”, the words “call upon the owner of the undertaking” shall be substituted;

(d) for sub-section (4) and the *Explanation* thereto, the following sub-section and *Explanations* shall be substituted, namely:—

‘(4) Nothing in this section shall apply to any undertaking in so far as the expansion is effected by the replacement, renovation or modernisation of the whole or any part of the machinery or other equipment of the undertaking or by the installation of any balancing equipment, and if as a result of the expansion so effected, the increase in the licensed capacity of the undertaking does not exceed, in the aggregate, twenty-five per cent. of its licensed capacity before any expansion thereof.

*Explanation I.*—For the purposes of this sub-section “balancing equipment” means any equipment or device needed for removing any production bottleneck, and includes the installation of any equipment or device in the tool room, ancillary services or inspection department where such installation has a bearing on the quantum and quality of production to be achieved.

*Explanation II.*—For the purposes of this sub-section, the increase in the licensed capacity shall be deemed to be in addition to, and not in derogation of, the increase in the licensed capacity which may be made without the approval of the Central Government under the provisions of sub-section (2), read with the *Explanation* below that sub-section.

#### *Illustration*

The owner of undertaking X, having a licensed capacity of 10,000 units, proposes to make an expansion of the undertaking by the replacement, renovation or modernisation of the whole or any part of the machinery or other equipment of such undertaking or by the

installation of any balancing equipment, and thereby to increase the licensed capacity of such undertaking to 14,999 units. The increase in the licensed capacity of undertaking X, being below 5,000 units, the proposal for the expansion of undertaking X would not, by virtue of the combined operation of this sub-section and the *Explanation* below sub-section (2), require the approval of the Central Government under sub-section (2).

*Explanation III.*—References in this sub-section to licensed capacity shall, in relation to any undertaking which does not have any licensed capacity, be construed as references to production, storage, marketing, supply, distribution or control of goods, or provision of services, by, or the value of the assets of, such undertaking, as the case may be.

**17. In section 22 of the principal Act,—**

Amendment  
of section  
22.

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) No person or authority, other than Government, shall, after the commencement of this Act, establish—

(i) any new undertaking which, when established, would become an inter-connected undertaking of an undertaking to which this Part, applies; or

(ii) add any new unit or division to an undertaking to which this Part applies,

except under, and in accordance with the previous permission of the Central Government:

Provided that except where as a result of the establishment of new undertaking, unit or division, an undertaking would come into existence to which clause (b) of section 20 would apply, no permission shall be required if the new undertaking, or, as the case may be, the new unit or division, when established, would not produce the same goods or provide the same services in relation to which the undertaking—

(a) of which such new undertaking would be an inter-connected undertaking, or

(b) to which such new unit or division is proposed to be added,

is a dominant undertaking.

(1A) No owner of any undertaking to which clause (a) of section 20 applies, shall establish, except under, and in accordance with, the previous permission of the Central Government, any new undertaking for the production, storage, supply, distribution, marketing or control of any article, or for the provision of any service, for which there is no licensed capacity, and no such permission shall be granted by that Government unless the articles which are proposed to be produced, stored, supplied, distributed, marketed or controlled, or the services which are proposed to be provided, by such new undertaking are different from the articles produced, stored, supplied, distributed, marketed or controlled, or, as the case may be, services provided, by the first mentioned undertaking and the provisions of sub-sections (2) and (3) shall apply to the establishment of such new



undertaking as they apply to the establishment of a new undertaking or any new unit or division referred to in sub-section (1).”;

(b) in sub-section (2),—

(i) for the words “new undertaking”, wherever they occur, the words “new undertaking, unit or division” shall be substituted;

(ii) for the words “establishment of such undertaking”, the words “establishment of such undertaking, unit or division” shall be substituted;

(iii) the words “of establishing any undertaking” shall be omitted;

(iv) for the words “the scheme of finance”, the words “the value or quantity of goods that may be produced by the new undertaking, unit or division, the scheme of finance” shall be substituted;

(c) in sub-section (3), in clauses (a), (c) and (d), for the words “new undertaking”, the words “new undertaking, unit or division” shall be substituted.

Amendment  
of section  
23.

18. In section 23 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “Notwithstanding anything contained in any other law”, the words “Notwithstanding anything contained elsewhere in this Act or in any other law” shall be substituted;

(ii) for the words “under this Act”, the words “under this section” shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) (a) If the owner of any undertaking to which this Part applies frames a scheme of merger or amalgamation of such undertaking with any other undertaking to which this Part applies, or

(b) if any scheme of merger or amalgamation is proposed between two or more undertakings, and, if as a result of such merger or amalgamation, an undertaking would come into existence to which clause (a) or clause (b) of section 20 would apply,

the owner of the undertaking referred to in clause (a), or as the case may be, the framers of the scheme referred to in clause (b), shall, before taking any action to give effect to such scheme, make an application to the Central Government in the prescribed form with a copy of the scheme annexed thereto, for the approval of the scheme.”;

(c) in sub-section (3), for the words “such inter-connected undertakings as are not dominant undertakings and as produce the same goods”, the words, brackets, letters and figures “inter-connected undertakings which produce the same goods or provide the same services, and none of which is a dominant undertaking, if as a result of such merger or amalgamation, there does not come into existence any undertaking to which clause (a), or clause (b), of section 20 would apply” shall be substituted;

(d) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) If the owner of an undertaking to which this Part applies, proposes to take over the whole or part of any other undertaking, such owner shall, before giving effect to the proposal, make an application



in writing to the Central Government in the prescribed form for approval of the proposal specifying therein information regarding the inter-connection of such other undertaking with any other undertaking or undertakings, the scheme of finance with regard to the proposed take over and such other information as may be prescribed:

Provided that nothing in this sub-section shall apply to the take over by the owner of an undertaking, which is not a dominant undertaking, of any other undertaking which is also not a dominant undertaking, if both the undertakings produce the same goods or provide the same services, unless as a result of such take over, an undertaking would come into existence to which clause (a), or clause (b), of section 20 would apply.”;

(e) in sub-section (5), after the words “approved by the Central Government”, the words, brackets and figure “under sub-section (8)” shall be inserted;

(f) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) (a) On receipt of an application under sub-section (2) or, as the case may be, sub-section (4), the Central Government may, if it thinks fit, call upon the applicant to satisfy it that the proposed scheme of merger or amalgamation, or, as the case may be, the proposed take over, and the scheme of finance relating thereto, is not likely to lead to the concentration of economic power to the common detriment or is not likely to be prejudicial to the public interest in any other manner and that it is expedient in the public interest so to do, and if the Central Government is satisfied, after giving the applicant a reasonable opportunity of being heard, that it is necessary so to do, it may, by order, accord its approval to the proposal for such merger or amalgamation or, as the case may be, such take over;

(b) if the Central Government is of opinion that no such approval as is referred to in clause (a) can be given without further inquiry, it may refer the application to the Commission for an inquiry and the Commission may, after such hearing, as it may think fit, report to the Central Government, its opinion thereon.”;

(g) after sub-section (8), the following *Explanation* shall be inserted, namely:—

‘*Explanation.*—For the purposes of this section, “take over”,—

(a) in relation to an undertaking owned by a body corporate, means the acquisition of not less than twenty-five per cent. of the voting power in relation to such body corporate;

(b) in relation to any other undertaking, includes the acquisition or control of management thereof, whether by the acquisition of the ownership of the undertaking or under any mortgage, lease or licence or under any agreement or other arrangement.”;

(h) sub-section (9) shall be omitted.

19. In section 24 of the principal Act,—

(i) for the words “the undertaking concerned”, the words “the owner of the undertaking concerned” shall be substituted;

(ii) for the words “to divest itself”, the words “to divest himself” shall be substituted.

Amend-  
ment of  
section 24.

Amend-  
ment of  
section 25.

20. In section 25 of the principal Act, in sub-section (4), for the words "partners of any firm which is an undertaking within the meaning of this Act", the words and brackets "partners of any firm or the members of the managing or executive committee (by whatever name called) of any other association of individuals, whether incorporated or not, owning an undertaking within the meaning of this Act" shall be substituted.

Amend-  
ment of  
section  
26.

21. In section 26 of the principal Act,—

(a) in sub-section (1),—

(i) for the words "Every undertaking", the words "The owner of every undertaking" shall be substituted;

(ii) for the words "at the commencement of this Act", the words, brackets and figures "at the commencement of the Monopolies and Restrictive Trade Practices (Amendment) Act, 1983" shall be substituted;

(iii) for the words "for its registration as such undertaking", the words "for the registration of such undertaking as an undertaking to which that Part applies" shall be substituted;

(b) in sub-section (3), for the words "Any undertaking", the words "The owner of any undertaking" shall be substituted;

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) For the removal of doubts, it is hereby declared that nothing contained in this section shall apply to an undertaking which was registered under this section before the commencement of the Monopolies and Restrictive Trade Practices (Amendment) Act, 1983 and, accordingly, fresh registration, under this section, of such undertaking shall not be necessary."

Insertion  
of new  
sections  
27A and  
27B.

22. After section 27 of the principal Act, the following sections shall be inserted, namely:—

Power of  
the  
Central  
Govern-  
ment to  
direct  
sever-  
ance of  
inter-  
con-  
nection  
between  
under-  
takings.

27A. (1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, the Central Government may, if it is of opinion that the continuance of inter-connection of an undertaking (hereafter in this section referred to as the principal undertaking) with any other undertaking to which Part A of this Chapter applies, is detrimental to—

(a) the interests of the principal undertaking; or

(b) the future development of the principal undertaking; or

(c) the steady growth of the industry to which the principal undertaking pertains; or

(d) the public interest,

refer the matter to the Commission for an inquiry as to whether it is expedient in the public interest to make an order for the severance of such inter-connection on one or more of the grounds aforesaid, and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon and shall, where it is of opinion that the severance of the inter-connection of the principal undertaking with any

other undertaking ought to be made, include in its report a scheme with respect to such severance, providing therein for the matters specified in sub-section (2).

(2) Where, in any such report, the Commission recommends the severance of any such inter-connection, the scheme with respect thereto shall provide for the following matters, namely:—

(a) the manner in which, and the period within which, the severance of such inter-connection is to be effected;

(b) the appropriation or transfer of any share or other interest held by the owner in, or in relation to, the principal undertaking, in the other undertaking or the termination of any office or employment in such undertaking, which may be required for effecting the severance of such inter-connection;

(c) compensation, if any, payable for the severance of such inter-connection; and

(d) such incidental, consequential and supplemental matters, as may be necessary to secure the severance of such inter-connection.

(3) If the Commission so recommends, the Central Government may, notwithstanding anything contained in any other law for the time being in force, by an order in writing, direct the severance of inter-connection between the undertakings, as far as may be, in accordance with the scheme included in the report of the Commission.

(4) Where the Central Government makes, or intends to make, an order for any purpose mentioned in sub-section (3), it may, with a view to achieving that purpose, prohibit or restrict the doing of anything that might impede the operation or making of the order and may impose on any person such obligations as to the carrying on of any activities or the safeguarding of any assets, as it may think fit, or it may, by order, provide for the carrying on of any activities or safeguarding of any assets either by the appointment of a person to conduct, or supervise the conduct of, any such activities or in any other manner.

(5) Notwithstanding anything contained in any other law for the time being in force or in any contract or in any memorandum or articles of association, an officer of a company who ceases to hold office as such in consequence of the severance of inter-connection between undertakings shall not be entitled to claim any compensation for such cesser.

*Explanation.*—For the purposes of this section, “inter-connection” means inter-connection of an undertaking with any other undertaking in any manner specified in clause (g) of section 2.

27B. (1) Whenever, in pursuance of any order made by the Central Government, whether under section 27 or under section 27A, for the division of any trade of an undertaking or the division of an undertaking or the severance of any inter-connection between two or more undertakings is to be effected by—

(a) the dis-investment by any person holding any shares in the body corporate owing such undertaking or undertakings, or

(b) the sale of the whole or any part of such undertaking or undertakings,

the Central Government shall have the right, to the exclusion of all persons, to acquire, by notification, the shares to be so dis-invested or the undertaking or any part thereof which is to be so sold.

Power of the Central Government to acquire undertakings, etc.

(2) Subject to, and in accordance with, the provisions contained in the Schedule (which shall be deemed to be a part of this section), where any share or an undertaking or any part thereof is acquired by the Central Government in exercise of the powers conferred on it by sub-section (1), the right, title and interest of the shareholder in relation to such share, or, as the case may be, of the owner in relation to such undertaking or part thereof, shall, on and from the date of such notification, stand transferred to, and vested in, the Central Government free from all incumbrances.

(3) Notwithstanding anything contained in sub-sections (1) and (2) or in any other law for the time being in force, where any share, or an undertaking or part thereof, has vested in the Central Government under sub-section (2), that Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, declare by notification that the shares, or, as the case may be, the undertaking or part thereof, so acquired, shall on and from the date of such declaration, be transferred to that Government company, and on the issue of such declaration, the right, title and interest of the Central Government in relation to the said shares, or, as the case may be, the undertaking or part thereof, shall, instead of continuing to vest in the Central Government, vest in that Government company, either on the date on which such declaration is made or on such earlier or later date, not being a date earlier than the date of the acquisition, as may be specified in the notification."

Insertion  
of new  
Chapter  
III-A

23. After Chapter III of the principal Act, the following Chapter shall be inserted, namely:—

#### CHAPTER III-A

##### RESTRICTIONS ON THE ACQUISITION AND TRANSFER OF SHARES OF, OR BY, CERTAIN BODIES CORPORATE

Applica-  
tion of  
Chapter.

30A. The provisions of this Chapter shall apply to the acquisition or transfer of shares or share capital by, or to, an individual, firm, group, constituent of a group, body corporate, or bodies corporate under the same management, who or which,—

(a) is the owner in relation to an undertaking to which Part A of Chapter III applies, or

(b) would be, as a result of such acquisition or transfer of shares or share capital, the owner of an undertaking to which Part A of Chapter III applies, or would apply.

Restric-  
tions on  
the  
acquisition  
of certain  
shares.

30B. (1) Except with the previous approval of the Central Government, no individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management, shall jointly or severally acquire or agree to acquire, whether in his or its own name or in the name of any other person, any equity shares in a public company, or a private company which is a subsidiary of a public company, if the total nominal value of the equity shares intended to be so acquired exceeds, or would, together with the total nominal value of any equity shares already held in the company by such individual, firm, group, constituent of a group, body corporate, or bodies corporate under the same management, exceed twenty-five per cent. of the paid-up equity share capital of such company.

(2) Where any individual firm, group, constituent of a group, body corporate, or bodies corporate under the same management (hereafter in this Chapter referred to as the acquirer), is prohibited, by sub-section (1), from acquiring or agreeing to acquire except with the previous approval of the Central Government, any share of a public company or a private company which is a subsidiary of a public company, no—

(a) company in which not less than fifty one per cent. of the share capital is held by the Central Government; or

(b) corporation (not being a company) established by or under any Central Act; or

(c) financial institution,

shall transfer or agree to transfer any share to such acquirer unless such acquirer has obtained the previous approval of the Central Government for the acquisition, or agreement for the acquisition, of such share.

30C. (1) Every body corporate, or bodies corporate under the same management, holding, whether singly or in the aggregate, ten per cent. or more of the nominal value of the subscribed equity share capital of any other company, shall, before transferring one or more of such shares, give to the Central Government an intimation of its or their proposal to transfer such share, and every such intimation shall include a statement as to the particulars of the share proposed to be transferred, the name and address of the person to whom the share is proposed to be transferred, the share holding, if any, of the proposed transferee in the concerned company and such other particulars as may be prescribed.

Restric-  
tion on  
transfer  
of shares.

(2) Where, on receipt of an intimation given under sub-section (1) or otherwise, the Central Government is satisfied that as a result of such transfer, a change in the composition of the Board of directors of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, it may by order, direct that—

(a) no such share shall be transferred to the proposed transferee;

Provided that no such order shall preclude the body corporate or bodies corporate from intimating, in accordance with the provisions of sub-section (1), to the Central Government its or their proposal to transfer the share to any other person or

(b) where such share is held in a company engaged in any industry specified in Schedule XIII to the Companies Act, 1956, such share shall be transferred to the Central Government or to such corporation owned or controlled by that Government as may be specified in the direction.

(3) Where a direction is made by the Central Government under clause (b) of sub-section (2), the share referred to in such direction shall stand transferred to the Central Government or to the corporation specified therein, and the Central Government or the specified corporation, as the case may be, shall pay, in cash, to the body corporate or bodies corporate from which such share stands transferred an amount equal to the market value of such share, within the time specified in sub-section (4).

*Explanation.*—In this sub-section ‘market value’ means in the case of a share which is quoted on any recognised stock exchange, the value



quoted at such stock exchange on the date immediately preceding the date on which the direction is made, and, in any other case, such value as may be mutually agreed upon between the holder of the share and the Central Government or the specified corporation, as the case may be, or in the absence of such agreement, as may be determined by the Court.

(4) The market value referred to in sub-section (3) shall be given forthwith, where there is no dispute as to such value or where such value has been mutually agreed upon, but where there is a dispute as to the market value, such value as is estimated by the Central Government or the corporation, as the case may be, shall be given forthwith and the balance, if any, shall be given within thirty days from the date when the market value is determined by the Court.

(5) If the Central Government does not make any direction under sub-section (2) within sixty days from the date of receipt by it of the intimation, given under sub-section (1), the provisions contained in sub-section (2) with regard to the transfer of such share shall not apply.

Restri-  
tion on  
the trans-  
fer of  
shares of  
foreign  
com-  
panies.

30D. No body corporate, or bodies corporate under the same management, which holds, or hold in the aggregate, ten per cent or more of the nominal value of the equity share capital of a foreign company, having an established place of business in India, shall transfer any share in such foreign company to any citizen of India or any body corporate incorporated in India except with the previous approval of the Central Government and such previous approval shall not be refused unless the Central Government is of opinion that such transfer would be prejudicial to the public interest.

Power of  
the  
Central  
Govern-  
ment to  
direct  
compa-  
nies not  
to give  
effect to  
the trans-  
fer.

30E. (1) Where the Central Government is satisfied that as a result of the transfer of any share or block of shares of a company, a change in the controlling interest of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, that Government may direct the company not to give effect to the transfer of any such share or block of shares and—

(a) where the transfer of such share or block of shares has already been registered, not to permit the transferee or any nominee or proxy of the transferee, to exercise any voting or other rights attaching to such share or block of shares, and

(b) where the transfer of such share or block of shares has not been registered, not to permit any nominee or proxy of the transferor to exercise any voting or other rights attaching to such share or block of shares.

(2) Where any direction is made by the Central Government under sub-section (1), the share or the block of shares referred to therein shall stand retransferred to the person from whom it was acquired, and thereupon the amount paid by the transferee for the acquisition of such share or block of shares shall be refunded to him by the person to whom such share or block of shares stands or stand retransferred.

(3) If the refund referred to in sub-section (2) is not made within the period of thirty days from the date of the direction referred to in sub-section (1) the Central Government shall, on the application of the person entitled to get the refund, direct by order, the refund of such amount and such order may be enforced as if it were a decree made by a civil court.



(4) The person to whom any share or block of shares stands or stand retransferred under sub-section (2) shall, on making refund under sub-section (2) or sub-section (3), be eligible to exercise voting or other rights attaching to such share or block of shares.

30F. Every request made to the Central Government for according its approval to the proposal for the acquisition of any share referred to in section 30B or the transfer of any share referred to in section 30D shall be presumed to have been granted unless, within a period of sixty days from the date of receipt of such request, the Central Government communicates to the person by whom the request was made, that the approval prayed for cannot be granted.

Time within which refusal to be communicated.

30G. Nothing contained in section 30B [except sub-section (2) thereof] shall apply to the transfer of any share to, and nothing in section 30C, section 30D or section 30E shall apply to the transfer of any share by,—

Nothing in sections 30B to 30E to apply to Government companies, etc.

(a) any company in which not less than fifty-one per cent. of the share capital is held by the Central Government;

(b) any corporation (not being a company) established by or under any Central Act;

(c) any financial institution.

24. In section 31 of the principal Act,—

(a) in sub-section (1), for the words “one or more monopolistic undertakings are indulging in any monopolistic trade practice”, the words “the owners of one or more undertakings are indulging in any practice, which is, or, may be, a monopolistic trade practice” shall be substituted;

Amendment of section 31.

(b) to sub-section (1), the following proviso shall be added, namely:—

“Provided that where the Commission receives any information, or comes to know, that the owner of any undertaking is, or, the owners of two or more undertakings are, indulging in any trade practice, which is, or may be, a monopolistic trade practice, or that monopolistic trade practices prevail in respect of any goods or services, it may on its own motion, and notwithstanding that no reference has been made to it by the Central Government under this sub-section, make an inquiry into the matter.”;

(c) in sub-section (2), after the words “or is likely to operate against the public interest,”, the words “it shall make a report to the Central Government as to its findings thereon and on receipt of such report,” shall be inserted;

(d) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) If any such report contains a finding of the Commission to the effect that the owner of any undertaking is, or, the owners of two or more undertakings are, indulging in any monopolistic trade practice, or that monopolistic trade practice prevails in respect of any goods or services, and the Central Government is satisfied that it is necessary to take steps to remedy or prevent any mischiefs which result or may result from such monopolistic trade practice, and that

such monopolistic trade practice does not fall within any of the exceptions specified in section 32, it may, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, make such orders as it may think fit,—

(a) prohibiting the owned of the concerned undertaking or the owners of the concerned undertakings, as the case may be, from continuing to indulge in such monopolistic trade practice; or

(b) prohibiting the owners of any class of undertakings or undertakings generally, from continuing to indulge in any monopolistic trade practices in relation to such goods or services, and

may also make such other orders as it may think fit to remedy or prevent any mischief which results, or may result, from the continuation of monopolistic trade practices in relation to the goods and services aforesaid.”;

(c) in sub-section (3).—

(i) for the words “Any order made by the Central Government under this section may include an order”, the words, brackets, figure and letter “Without prejudice to the generality of the powers conferred by sub-section (2A), any order made by the Central Government under this section may also include an order” shall be substituted;

(ii) in clauses (a) and (b), for the words “production, supply”, the words “production, storage, supply” shall be substituted;

(iii) after clause (c), the following clauses shall be inserted, namely:—

“(f) regulating the profits which may be derived from the production, storage, supply, distribution or control of goods or from the provision of any service;

(g) regulating the quality of any goods or the provision of any service so that the standards thereof may not deteriorate.”;

(f) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Whenever any order is made by the Central Government under sub-section (2A) prohibiting the owner of any undertaking or class of undertakings or undertakings generally from continuing to indulge in any monopolistic trade practice,—

(a) the owner of any undertaking or the owners of undertakings of any class, as the case may be, shall, within thirty days from the date of receipt of such order (or within such further time as the Central Government may, on sufficient cause being shown, allow) communicate to the Central Government his or their compliance with the order; and

(b) the Director General shall within ninety days from the date of such order (or from the expiry of the further time allowed by the Central Government) inform the Central Government, whether the order made by it has been complied with, and where

the Director General has any reason to believe that any such order has been, or is being, contravened by the owner of any undertaking, he shall inform the Central Government about the particulars of the owner of such undertaking, to enable that Government to take such action, under this Act, as it may think fit.”.

25. For section 32 of the principal Act, the following section shall be substituted, namely:—

Substitution of section 32.

“32. For the purposes of this Act, every monopolistic trade practice shall be deemed to be prejudicial to the public interest, except where—

Monopolistic trade practice to be deemed to be prejudicial to the public interest, except in certain cases.

(a) such trade practice is expressly authorised by any enactment for the time being in force, or

(b) the Central Government, being satisfied that any such trade practice is necessary—

(i) to meet the requirements of the defence of India or any part thereof, or for the security of the State; or

(ii) to ensure the maintenance of supply of goods and services essential to the community; or

(iii) to give effect to the terms of any agreement to which the Central Government is a party,

by a written order, permits the owner of any undertaking to carry on any such trade practice.”.

26. In Chapter V of the principal Act,—

Substitution of heading and insertion of sub-heading in Chapter V.

(i) for the heading, the following shall be substituted, namely:—

“RESTRICTIVE TRADE PRACTICES AND UNFAIR TRADE PRACTICES”;

(ii) below the said heading, the following word, letter and sub-heading shall be inserted, namely:—

#### “PART A

##### *Registration of Agreements Relating to Restrictive Trade Practices”*

27. In section 33 of the principal Act,—

Amendment of section 33.

(a) in sub-section (1),—

(i) in the opening portion for the words “Any agreement relating to a restrictive trade practice falling within one or more of the following categories shall be subject to registration”, the words “Every agreement falling within one or more of the following categories shall be deemed, for the purposes of this Act, to be an agreement relating to restrictive trade practices and shall be subject to registration”, shall be substituted:

(ii) after clause (i), the following clauses shall be inserted, namely:—

“(ja) any agreement restricting in any manner, the class or number of wholesalers, producer or suppliers from whom any goods may be bought;

(jb) any agreement as to the bids which any of the parties thereto may offer at an auction for the sale of goods or any agreement whereby any party thereto agrees to abstain from bidding at any auction for the sale of goods;”.

(b) in sub-section (2), for the words “production, supply”, the words “production, storage, supply” shall be substituted.

Omission  
of section  
34.

28. Section 34 of the principal Act shall be omitted.

Amend-  
ment of  
section 35.

29. In *Explanation* I to section 35 of the principal Act, for the words “production, supply”, the words “production, storage, supply” shall be substituted.

Insertion  
of new  
Part B in  
Chapter V

30. In Chapter V of the principal Act, after section 36, the following Part shall be inserted, namely:—

#### ‘PART B

##### *Unfair Trade Practices*

Definition  
of unfair  
trade prac-  
tice.

36A. In this Part, unless the context otherwise requires, “unfair trade practice” means a trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provision of any services, adopts one or more of the following practices and thereby causes loss or injury to the consumers of such goods or services, whether by eliminating or restricting competition or otherwise, namely:—

(1) the practice of making any statement, whether orally or in writing or by visible representation which,—

(i) falsely represents that the goods are of a particular standard, quality, grade, composition, style or model;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(viii) makes to the public a representation in a form that purports to be—

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been, or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.

*Explanation.*—For the purposes of clause (1), a statement that is—

(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale, or

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

*Explanation.*—For the purpose of clause (2), “bargain price” means—

(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

(b) a price that a person who reads, hears, or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

## (3) permits—

(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole,

(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(c) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale, or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

Inquiry  
into unfair  
trade prac-  
tices by  
Commis-  
sion.

36B. The Commission may inquire into any unfair trade practice,—

(a) upon receiving a complaint of facts which constitutes such practice from any trade or consumers' association having a membership of not less than twenty-five persons or from twenty-five or more consumers; or

(b) upon a reference made to it by the Central Government or a State Government;

(c) upon an application made to it by the Director General; or

(d) upon its own knowledge or information.

Investiga-  
tion by Di-  
rector Ge-  
neral  
before an  
issue of  
process in  
certain  
cases.

36C. In respect of any unfair trade practice of which complaint is made under clause (a) of section 36B, the Commission shall, before issuing any process requiring the attendance of the person complained against, cause a preliminary investigation to be made by the Director General, in such manner as it may direct, for the purpose of satisfying itself that the complaint requires to be inquired into.

Powers  
which  
may be  
exercised  
by the  
Commis-  
sion  
inquiring  
into an  
unfair  
trade prac-  
tice.

36D. (1) The Commission may inquire into any unfair trade practice which may come before it for inquiry and, if, after such inquiry, it is of opinion that the practice is prejudicial to the public interest, or to the interest of any consumer or consumers generally, it may, by order direct that—

(a) the practice shall be discontinued or shall not be repeated;  
and

(b) any agreement relating to such unfair trade practice shall be void or shall stand modified in respect thereof in such manner as may be specified in the order.



(2) The Commission may, instead of making any order under this section, permit any party to carry on any trade practice, if it so applies and takes such steps within the time specified by the Commission as may be necessary to ensure that the trade practice is no longer prejudicial to the public interest or to the interest of any consumer or consumers generally, and, in any such case, if the Commission is satisfied that necessary steps have been taken within the time so specified, it may decide not to make any order under this section in respect of that trade practice.

(3) No order shall be made under sub-section (1) in respect of any trade practice which is expressly authorised by any law for the time being in force.

36E. Without prejudice to the provisions of section 12A, section 12B and section 36D, the Commission, Director General or any other person authorised in this behalf by the Commission or Director General, may exercise, or perform, in relation to any unfair trade practice, the same power or duty which it or he is empowered, or required, by or under this Act to exercise, or perform, in relation to a restricted trade practice.

Power relating to restrictive trade practices may be exercised or performed in relation to unfair trade practices.

31. In sub-section (4) of section 37 of the principal Act,—

(i) for the words “a monopolistic undertaking is indulging in restrictive trade practices”, the words “the owner of any undertaking is indulging in monopolistic trade practices” shall be substituted;

(ii) the words “with regard to any monopolistic trade practice” shall be omitted.

Amendment of section 37.

32. In sub-section (1) of section 38 of the principal Act,—

(i) in clause (g), the word “or”, occurring at the end, shall be omitted;

(ii) after clause (h), the following clauses shall be inserted, namely:—

“(i) that such restriction has been expressly authorised and approved by the Central Government;

(j) that such restriction is necessary to meet the requirements of the defence of India or any part thereof, or for the security of the State; or

(k) that the restriction is necessary to ensure the maintenance of supply of goods and services essential to the community.”.

Amendment of section 38.

33. In the proviso to sub-section (3) of section 39 of the principal Act, for the words “trade mark by a licensee under any such licence”, the words “trade mark or by a licensee of patent or trade mark” shall be substituted.

Amendment of section 39.

34. In section 43 of the principal Act, for the words “call upon any undertaking”, the words “call upon the owner of any undertaking” shall be substituted.

Amendment of section 43.

35. In section 44 of the principal Act, in sub-section (1), for the words “or restrictive trade practice”, the words “or restrictive, or unfair, trade practice” shall be substituted.

Amendment of section 44.

Amend-  
ment of  
section 45.

36. In section 45 of the principal Act,—

(i) after the words “he shall be punishable”, the words “with imprisonment for a term which may extend to five years, or” shall be inserted;

(ii) for the words “rupees one lakh”, the words “rupees one lakh, or with both” shall be substituted.

Amend.  
ment of  
section 46.

37. In section 46 of the principal Act,—

(i) after the words “he shall be punishable”, the words “with imprisonment for a term which may extend to five years, or” shall be inserted;

(ii) after the words “rupees one lakh”, the words “or with both,” shall be inserted.

Amend.  
ment of  
section 47.

38. In section 47 of the principal Act,—

(i) for the words “two thousand rupees”, the words “five thousand rupees” shall be substituted;

(ii) for the words “two hundred rupees”, the words “five hundred rupees” shall be substituted.

Amend.  
ment of  
section 48.

39. In section 48 of the principal Act,—

(1) in sub-section (1),—

(a) after the words “he shall be punishable”, the words “with imprisonment for a term which may extend to three years, or” shall be inserted;

(b) after the words “five thousand rupees,”, the words “or with both,” shall be inserted;

(2) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) If the owner of any undertaking, to which Part A of Chapter III applies, fails without any reasonable excuse, to make an application under section 26 for the registration of the undertaking as an undertaking to which that Part applies, then—

(a) where the undertaking is owned by a company,—

(i) the company shall be punishable with fine which may extend to one thousand rupees, and where the offence is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first, during which such failure continues, and

(ii) every officer of the company in default shall be punishable with imprisonment for a term which may extend

to two years or with fine which may extend to one thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first, during which such failure continues;

(b) where the undertaking is owned by a firm, every partner of such firm; or where the undertaking is not owned either by a company or by a firm, every person who owns or controls the undertaking, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first, during which such failure continues."

40. After section 48 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 48A, 48B and 48C.

"48A. Any person who,—

Penalty for possession, etc., of property acquired by the Central Government under section 27B.

(a) having in his possession, custody or control any property which forms a part of the undertaking, or part thereof, which has been acquired by the Central Government under section 27B, wrongfully withholds such property from the Central Government or from the person or body of persons specified by that Government; or

(b) wrongfully obtains possession of, or retains, any property which forms a part of the undertaking, or part thereof, which has been acquired by the Central Government under section 27B; or

(c) withholds or fails to furnish to the Central Government or to the person or body of persons specified by that Government, any document in his possession, custody or control relating to the undertaking or part thereof, which has been acquired by the Central Government under section 27B; or

(d) fails to deliver to the Central Government or any person or body of persons specified by that Government, any assets, books of account, registers and other documents in his possession, custody or control relating to the undertaking or any part thereof which has been acquired by the Central Government under section 27B; or

(e) wrongfully removes or destroys any property which forms a part of the undertaking or any part thereof, which has been acquired by the Central Government under section 27B or prefers any claim in relation to that undertaking or any part thereof which he knows or has reason to believe to be false or grossly inaccurate,

shall be punishable with imprisonment for a term which may extend to two years and also with fine which may extend to ten thousand rupees.

Penalty for acquisition or transfer of share in contravention of section 30B, 30C, 30D or 30E.

48B. (1) Any person who acquires any share in contravention of the provisions of section 30B shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(2) (a) Every body corporate which makes any transfer of shares without giving any intimation as required by section 30C, shall be punishable with fine which may extend to five thousand rupees.

(b) Where any contravention of the provisions of section 30C has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(3) (a) Every body corporate which makes any transfer of shares in contravention of the provisions of section 30D, shall be punishable with fine which may extend to five thousand rupees.

(b) Where any contravention of the provisions of section 30D has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(4) (a) Every person who transfers any share in contravention of any order made by the Central Government under section 30C, or gives effect to any transfer of shares made in contravention of any direction made by the Central Government under section 30E, or who exercises any voting right in respect of any share in contravention of any direction made by the Central Government under section 30E, shall be punishable with imprisonment for a term which may extend to five years, and shall also be liable to fine.

(b) If any company gives effect to any voting or other right exercised in relation to any share acquired in contravention of the provisions of section 30C, or which gives effect to any voting right in contravention of any direction made by the Central Government under section 30E, the company shall be punishable with fine which may extend to five thousand rupees, and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Penalty for contravention of order made by Commission relating to unfair trade practices.

48C. If any person contravenes any order made by the Commission under section 36D, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both."

41. In sub-section (1) of section 49 of the principal Act, for the words "to furnish any information", the words and figures "to produce any books or papers, or to furnish any information, required by the Director General under section 11, or to furnish any information" shall be substituted.

Amendment of section 49.

42. Section 50 of the principal Act shall be re-numbered as sub-section (1) thereof, and—

Amendment of section 50.

(a) in sub-section (1) as so re-numbered,—

(i) for the words and figures "If any person contravenes any order made under section 13 or section 31 or section 37", the words and figures "A person who is deemed, under section 13, to be guilty of an offence under this Act" shall be substituted;

(ii) for the words "six months", the words "one year" shall be substituted;

(b) after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(2) If any person contravenes, without any reasonable excuse, any order made by the Central Government under section 31, or any order made by the Commission under section 37, he shall be punishable with imprisonment for a term which shall not be less than,—

(a) in the case of the first offence, six months but not more than two years, and

(b) in the case of any second or subsequent offence in relation to the goods or services in respect of which the first offence was committed, two years but not more than five years,

and, in either case, where the contravention is a continuing one, also with fine which may extend to five hundred rupees for every day, after the first, during which such contravention continues:

Provided that the court may, if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment for a term lesser than the minimum term specified in this sub-section.

(3) If any person carries on any trade practice which is prohibited by this Act, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to five hundred rupees for every day, after the first, during which such contravention continues."

Insertion  
of new  
sections 52A  
and 52B.

43. After section 52 of the principal Act, the following sections shall be inserted, namely:—

Penalty  
for con-  
travention  
of any  
condition  
or restric-  
tion, etc.

“52A. If any person contravenes, without any reasonable excuse, any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act, he shall be punishable with fine which may extend to one thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to one hundred rupees for every day, after the first, during which such contravention continues.

Penalty  
for making  
false  
statement  
in applica-  
tion,  
returns,  
etc.

52B. If in any application, return, report, certificate, balance-sheet, prospectus, statement or other document made, submitted, furnished or produced for the purpose of any provision of this Act, any person makes a statement,—

(a) which is false in any material particular, knowing it to be false, or

(b) which omits to state any material fact, knowing it to be material,

he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.”

Amend-  
ment of  
section 55.

44. In section 55 of the principal Act,—

(a) for the words and figures “any order made by the Central Government under Chapter III”, the words, brackets, letters and figures “any decision on any question referred to in clause (a), clause (b) or clause (c) of section 2A, or any order made by the Central Government under Chapter III” shall be substituted;

(b) for the words and figures “section 13 or section 37”, the words, figures and letter “section 13 or section 36D or section 37” shall be substituted.

Amend-  
ment of  
section 56.

45. In section 56 of the principal Act, for the words “Presidency Magistrate or a Magistrate of the first class”, the words “Court of Session” shall be substituted.

Omission  
of section  
58.

46. Section 58 of the principal Act shall be omitted.

Amend-  
ment of  
section 60.

47. In section 60 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The provisions of sub-section (2) relating to the disclosure of information shall not extend to the disclosure of the source of such information, except where the disclosure of such source is required by any court, tribunal or other authority.”

Amend-  
ment of  
section 61.

48. In section 61 of the principal Act, for the words “restrictive trade practices”, the words “restrictive or unfair trade practices” shall be substituted.



40. In section 66 of the principal Act, in sub-section (2), clause (d) shall be omitted.

Amendment of section 66.

50. In section 67 of the principal Act, in sub-section (2),—

Amendment of section 67.

(i) after clause (a), the following clause shall be inserted, namely:—

“(aa) the form in which an application shall be made to the Central Government under section 23 for the approval of any scheme of merger or amalgamation of an undertaking with any other undertaking;”;

(ii) after clause (b), the following clause shall be inserted, namely:—

“(ba) the particulars which may be required to be specified in any intimation to the Central Government with regard to the transfer of shares;”;

(iii) after clause (c), the following clause shall be inserted, namely:—

“(ca) the duties and functions of the Director General;”;

(iv) in clause (d), the words “by the Registrar” shall be omitted;

(v) after clause (d), the following clause shall be inserted, namely:—

“(da) the manner in which every authenticated copy of any order made by the Commission in respect of any restrictive, or unfair, trade practice shall be recorded;”;

(vi) after clause (g), the following clause shall be inserted, namely:—

“(ga) the manner in which any money, standing to the credit of any provident fund, superannuation, welfare or other fund, which stands transferred to the Central Government or any Government company, shall be dealt with;”.

51. After section 67 of the principal Act, the following Schedule shall be inserted, namely:—

Insertion of Schedule.

#### “THE SCHEDULE

[See section 27B(2)]

#### PROVISIONS RELATING TO THE ACQUISITION OF SHARES OR UNDERTAKINGS

1. The undertaking, or any part of an undertaking, referred to in sub-section (2) of section 27B shall include all assets, rights, powers, authorities and privileges, and all property, movable and immovable, cash balances, reserve funds, investments, book-debts

and all other rights and interests in, or arising out of, such undertaking or, as the case may be, any part of the undertaking, as were, immediately before the date of the acquisition under sub-section (1) of section 27B, in the ownership, possession, power or control of the owner of the undertaking or part of the undertaking and all books of account, registers, records and all other documents of whatever nature relating thereto, but shall not include any debts (not being book-debts) due to such owner and, in the case of a company owning the undertaking, or part of the undertaking, any money recoverable by the company from its shareholders or directors.

2. Where any share in a company is acquired by the Central Government under section 27B, or where the Central Government having acquired any share, makes a declaration under sub-section (3) of section 27B that such share shall be transferred to a Government company, the company in which such share is held shall, notwithstanding anything contained in the Companies Act, 1956, or in the memorandum or articles of association of the company, register the transfer of such shares in favour of the Central Government or the Government company, as the case may be, to which such shares are transferred.

1 of 1956.

3. (a) For the transfer to, and vesting in, the Central Government under sub-section (2) of section 27B of the right, title and interest of the holder of the share or of the owner of the undertaking or part thereof, as the case may be, there shall be paid by the Central Government to the holder of such shares or owner of the undertaking, or part of the undertaking, as the case may be, an amount equal to the market value of such share or of the undertaking or part thereof, as on the date immediately preceding the date on which such acquisition was made.

(b) The market value referred to in clause (a) shall be given, in cash, within thirty days from the date of the notification whereby such acquisition has been made:

Provided that where there is a dispute as to the market value, such value as is estimated by the Central Government shall be given forthwith to the person entitled thereto and the balance, if any, shall be given to him within thirty days from the date when the market value is determined by the Court.

4. All property which vests in the Central Government under sub-section (2) of section 27B, or in a Government company under sub-section (3) of section 27B shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other incumbrances affecting it and any attachment, injunction or decree or order of any court or tribunal restricting the use of such property in any manner shall be deemed to have been withdrawn.

5. The mortgagee of any property referred to in paragraph 4 or any other person holding any charge, lien or other interest in, or in relation to, any such property shall be entitled to claim payment of

the mortgage money or other dues, in whole or in part, out of the amount paid under paragraph 3, but no such mortgage, charge or lien or other interest shall be enforceable against the Central Government or the Government company in which the shares or the undertaking or part of the undertaking is directed to be vested under sub-section (3) of section 27B.

6. Where the right, title and interest in relation to any shares or undertaking or part of an undertaking, vest in a Government company, that company shall, on and from the date of such vesting, be deemed to have become the owner of such shares or the undertaking or part of the undertaking, as the case may be, and the rights and liabilities of the Central Government in relation to such shares or the undertaking or part of the undertaking, shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.

7. (a) Where no direction has been made in relation to an undertaking or part of the undertaking, the general superintendence, direction, control and management of the affairs and business of the undertaking or part of the undertaking which has been acquired by the Central Government in exercise of the powers conferred on it by sub-section (1) of section 27B shall vest, on and from the date of the acquisition, in such person or body of persons as may be appointed by the Central Government in this behalf (hereafter in this Schedule referred to as the Custodian), and thereupon the Custodian so appointed shall be entitled to exercise, to the exclusion of all other persons, all such powers and do all such things as the owner of such undertaking or part of the undertaking is authorised to exercise and do.

(b) The Custodian appointed under clause (a) shall receive from the funds of the undertaking or part of the undertaking such remuneration as may be specified by the Central Government.

8. (a) On the acquisition of an undertaking or part of an undertaking by the Central Government in exercise of the powers conferred on it by sub-section (1) of section 27B, all persons in charge of the management of the undertaking, or part of the undertaking, immediately before such acquisition shall deliver to the Central Government, or the Government company notified under sub-section (3) of section 27B or the Custodian appointed under clause (a) of paragraph 7, as the case may be all assets, books of account, registers and other documents in their custody relating to the undertaking or part of the undertaking, as the case may be.

(b) The Central Government may issue such directions as it may deem desirable in the circumstances of the case to the Government company or the Custodian and the Government company or the Custodian may also apply to the Central Government at any time for instructions as to the manner in which the management of the undertaking or part of the undertaking shall be conducted or in relation to any other matter arising in the course of such management.

(c) Any person who has, on the date of notification made under sub-section (1) of section 27B, in his possession or under his control any assets, books, documents or other papers relating to the undertaking or part of the undertaking which have been acquired by the Central Government and which belong to the owner of such undertaking, or part of the undertaking, or would have so belonged if the undertaking, or part of the undertaking had not been acquired by the Central Government, shall be liable to account for the said assets, books, documents and other papers to the Central Government or the Government company or the Custodian, as the case may be, and shall deliver them up to the Central Government, the Government company or the Custodian or to such other person or body of persons as the Central Government or the Government company may specify in this behalf.

(d) The Central Government may take or cause to be taken, all necessary steps for securing the possession of the undertaking, or part of the undertaking, which has been acquired by it under section 27B.

(e) Every person who has been immediately before the acquisition of an undertaking or part of an undertaking employed in relation to that undertaking, or part of the undertaking, shall become, on and from the date of the acquisition, an employee of the Central Government, and, where the undertaking, or part of an undertaking, is directed by the Central Government to vest in a Government company, of that company, and shall hold office or service under the Central Government or the Government company, as the case may be, with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the undertaking, or part of the undertaking, had not been transferred to, and vested in, the Central Government or the Government company and shall continue to do so unless and until his employment under the Central Government or the Government company is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Central Government or the Government company, as the case may be.

(f) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other employee employed in an undertaking or part of an undertaking to the Central Government or the Government company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

14 of 1947.

(g) Where under the terms of any contract of service, or otherwise, any person, whose services become terminated or whose services become transferred to the Central Government or the Government company by reason of the acquisition made under section 27B, is entitled to any arrears of salary or wages or any payment for any leave not availed of or other payment, not being a payment by way of gratuity or pension, such person may enforce his claim against the person by whom such undertaking or part of the undertaking was owned before its acquisition under section 27B but not against the Central Government or the Government company.

(h) Where the owner of an undertaking, or part of an undertaking, had established a provident fund, superannuation, welfare or other fund for the benefit of the persons employed in the undertaking, or part of the undertaking, which has been acquired under section 27B, the monies relatable to the employees whose services have become transferred to the Central Government or the Government company by or under section 27B, shall, out of the monies standing, on the date of the acquisition, to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to the Central Government or the Government company, as the case may be, and the monies which stand so transferred shall be dealt with by the Central Government or the Government company in such manner as may be prescribed.

9. Notwithstanding any decree, judgment or order of any court or tribunal, or anything contained in any other law for the time being in force, any receiver, official liquidator or any other person in whose possession or custody or under whose control any undertaking or part thereof, which is acquired in exercise of the powers conferred by section 27B, may be, shall deliver possession of such undertaking or such part thereof as may be in his possession, custody or control forthwith to the Central Government or the Government company, as the case may be.

10. (a) The owner of every undertaking, or part thereof, which has vested in the Central Government under sub-section (2) of section 27B, shall within such period as the Central Government may allow in this behalf, furnish to that Government a complete inventory of all the properties and assets as on the date of the notification made under sub-section (1) of section 27B pertaining to the undertaking, or part thereof, which has vested in the Central Government under sub-section (2) thereof.

(b) Where any part of the undertaking acquired by the Central Government under sub-section (1) of section 27B is in the possession of any receiver or official liquidator, the obligation of the owner referred to in clause (a) shall be discharged by such receiver or liquidator, as the case may be.

11. Every contract entered into by the owner of an undertaking, or part of an undertaking, which has been acquired by the Central Government in exercise of the powers conferred by sub-section (1) of section 27B for any service, sale or supply and in force immediately before the date of the notification made under sub-section (1) aforesaid, shall, on and from the date of expiry of one hundred and eighty days from the date of such notification, cease to have effect unless such contract is, before the expiry of that period, ratified in writing by the Central Government or the Government company in which such undertaking has vested under section 27B, and in ratifying such contract, the Central Government or the Government company may make such alteration or modification therein as it may think fit:

Provided that the Central Government or the Government company shall not omit to ratify a contract, and shall not make any alteration or modification in a contract—

(i) unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the



interests of the Central Government or the Government company; and

(i.) except after giving the parties to the contract a reasonable opportunity of being heard and except after recording in writing the reasons for refusal to ratify the contract or for making any alteration or modification therein.

*Explanation.*—In this Schedule,—

(a) “Court”,—

(i) in relation to the shares of a company, has the meaning assigned to it in the Companies Act, 1956,

1 of 1956.

(ii) in any other case, means, the High Court exercising jurisdiction in the State in which the undertaking or part of the undertaking is situated;

(b) “holder of a share” means the person in whose name such share stands registered, immediately before the date of the notification made under sub-section (1) of section 27B, in the books of the company as the holder of such share;

(c) “market value” means,—

(i) in the case of a share which is quoted on any recognised stock exchange, the value quoted at such stock exchange on the date immediately preceding the date on which the notification under sub-section (1) of section 27B is made by the Central Government, and, in any other case, such value as may be mutually agreed upon between the holder of the share and the Central Government, or in the absence of such agreement, such value as may be determined by the Court,

(ii) in the case of any undertaking or part of an undertaking, such value as may be mutually agreed upon between the Central Government and the owner of the undertaking or part of the undertaking, or in the absence of such agreement, such value as may be determined by the Court.

## PART II

### AMENDMENTS TO THE COMPANIES ACT, 1956

52. In the Companies Act, 1956,—

1 of 1956.

(a) in section 2, clause (18A) and the *Explanation* thereto shall be omitted;

(b) sections 108A to 108H shall be omitted, and reference in Schedule XIII to section 108B shall be omitted.

Omission of section 2(18A) and sections 108A to 108H.



## STATEMENT OF OBJECTS AND REASONS

The Monopolies and Restrictive Trade Practices Act, 1969 (hereafter referred to as the MRTP Act) came into effect from the 1st June, 1970. The High-Powered Expert Committee (Sachar Committee), which reviewed the working of this Act with a view to streamlining it, had made a number of recommendations in its Report, submitted in August, 1978, for amending certain provisions of the Act. The need for some modifications in the Act was also felt in the context of increased emphasis on productivity and the emerging economic situation in the country. By the MRTP (Amendment) Act, 1982, some amendments have already been made to the provisions of sections 21 and 22 of the Act.

2. The present Bill represents the second and final instalment of the amendments arising as a result of the recommendations made by the Sachar Committee and the suggestions received by the Government from various quarters from time to time. Some of the amendments are also based on experience of the working of the Act for over a decade and in the light of some judicial pronouncements.

3. At present, there are no specific provisions in the Act for regulating unfair trade practices, like misleading advertisements, bargain selling, etc. The Sachar Committee had, *inter alia*, recommended that the scope of the Act should be enlarged to cover unfair trade practices. The legislative history of the United States, the United Kingdom and other democratic and progressive countries of the world also shows that they have specific legal provisions for regulating unfair trade practices in order to supplement and bolster the law relating to restrictive trade practices. In the United Kingdom, the law relating to consumer protection *via* maintenance of competition has undergone a comprehensive change whereby it can now deal adequately with all trade practices which are anti-competitive, restrictive, deceptive and unfair. There is, indeed, a greater recognition now all over the world that the consumer needs to be protected not only from the effects of restrictive practices but also from practices which are resorted to by the trade and industry to mislead or dupe him. The Bill seeks to incorporate new provisions in this regard for the protection of the consumer.

4. At present the law requires approval of the Central Government before any new undertaking is established. It is felt that undertakings which do not belong to large houses and are "dominant" only in a particular product should be discouraged from setting up new undertakings only in the area in which they are dominant. The Bill accordingly seeks to provide that dominant undertakings, unless they propose to set up undertakings in the same line of activity in which they are dominant, would be free from the restraints of provisions of section 22. Similarly a lacuna in section 21, which allows undertakings to expand in diverse line of activity by adding plant and machinery to the existing undertaking on the ground that the new licences for the new articles cannot be construed to be an increase of the existing licensed capacity, is sought to be removed by providing that any proposal for production of a "new article" would attract the provisions of section 21 or section 22, as the case may be.

5. At present, under section 21(4) of the Act approval of the Central Government is not required to be obtained for effecting substantial expansion where the same is caused by modernisation, replacement or renovation of the whole or any part of the machinery or the installation of balancing equipment. It has been noticed that many undertakings have been taking recourse to such expansion to an unlimited extent in the garb of modernisation which was never the intention. The Sachar Committee had recommended exemption under this section only to the extent of 25 per cent. of the licensed capacity for any proposal for expansion, if caused by modernisation, replacement or renovation of the whole or any part of the machinery or installation of balancing equipment. The Bill seeks to introduce necessary provision to give specific effect to this recommendation.

6. The provisions of sections 108A to 108H of the Companies Act, 1956 regulate the acquisition and transfer of shares of companies to which the provisions of the MRTP Act apply. They are really intended to prevent acquisition or take-over of companies leading to further concentration of economic power. As recommended by the Sachar Committee, it is considered more appropriate that these provisions find place in the MRTP Act with necessary modifications. The provisions in the Companies Act are simultaneously proposed to be omitted.

7. At present, there is some vagueness with regard to the meaning of the expression "undertaking" occurring in the Act. The Bill proposes to remove this by identifying the "owner" of the undertaking as distinct from the undertaking itself. Then again, investment companies are used many times as instrument of control in the corporate sector, presently outside the purview of the Act, by reason of certain judicial pronouncements that investment companies are not "undertakings". The provisions of the Bill seek to bring the investment companies also within the purview of the Act. At present, section 3 of the Act exempts certain undertakings owned and controlled by Government, Government companies and statutory corporations. There are many big companies in the private sector in which financial institutions hold majority shares. A plea has been put forth by some companies that in such situations they will be exempt from the provisions of the Act. The position in this regard is sought to be made absolutely clear by the Bill.

8. The provisions relating to "inter-connected undertakings" have led to certain interpretative difficulties which are sought to be removed by the Bill. Under the law as it now stands, not less than one-third control over voting power or composition of the Board is required to establish inter-connection. Experience has shown that control can be exercised with not more than 25 per cent. of the voting power or by controlling not more than 25 per cent. of the composition of the Board of Directors of a company. The Bill seeks to provide for Sachar Committee's recommendation in this behalf to provide for establishment of inter-connection on the basis of not less than 25 per cent. control of voting power or of the Board. The concept of "group", which now finds a place in the Companies Act and which is more relevant for the purpose of establishing inter-connection of undertakings under the MRTP Act, is also proposed to be incorporated by the present Bill. The definition of "group" is also proposed to be modified in line with the recommendation of the Sachar Committee and the existing provision in this regard in the Companies Act is proposed to be omitted.

9. The value of assets is an important criterion for attracting the provisions of the Act. The assets which are to be used by companies are all shown

in the books of account and, hence, they should all be taken into account. A plea is however being taken by some companies that assets which are mortgaged are not their own assets even if they are making use of the same. A further plea is often taken that liability should be deducted from assets, although this view runs counter to the commonly accepted norms of accounting. However, to make the matter clear beyond any doubt, the Bill seeks to make necessary changes in the definition of "value of assets" as well as in section 20(a) where the expression "own assets" (which is being misinterpreted) occurs.

10. Further, various existing provisions of the Act, such as those relating to inter-connection, administrative machinery, determination of dominance, restrictive and monopolistic trade practices, undertaking, merger, take-over and amalgamation, appointment of directors of inter-connected undertakings, registration of undertakings, severance of inter-connection, penalties and prosecution, appeal from the orders under the Act and certain procedural matters relating to the administration of the Act are proposed to be streamlined for more effective regulation of its working and for preventing unhealthy practices.

11. The notes on clauses appended to the Bill explain in detail the provisions of the Bill.

GULAM NABI AZAD,

NEW DELHI;

*The 16th December, 1983.*

*Notes on clauses*

*Clause 2* seeks to substitute certain expressions.

*Clause 3:—*

Sub-clause (1) seeks to define the expression "Director General" so as to include Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration who may be appointed under the proposed revised section 8, to oversee the functioning of the provisions of the Act.

Sub-clause (2) seeks to give effect to the Sachar Committee recommendation for adopting the concept of average annual production in place of the existing concept of lowest production in one of the three calendar years for determining dominance. This sub-clause also seeks to clarify that the production figures to be relied upon for determining dominance may be published by such authority as the Central Government may, by notification, specify and need not necessarily be published by the Central Government.

Sub-clause (3).—At present, the concept of "public financial institution" is limited to the definition contained in section 4A of the Companies Act, 1956 and does not include nationalised banks, State Bank, state financial institutions, etc. This sub-clause proposes to define the expression "financial institution" so as to widen the meaning thereof.

Sub-clause (4).—The existing definition of "goods" does not include shares with the result that investment companies have remained outside the purview of the Act. The proposed definition seeks to redefine "goods" in terms of the definition contained in the Sale of Goods Act, 1930 and also to include products manufactured, processed or mined in India and also shares and stocks.

Sub-clause (5) seeks to adopt the more comprehensive definition of "group", as suggested by the Sachar Committee, for the purposes of the MRTP Act. The present definition of "group", as contained in the Companies Act, 1956, is being omitted.

Sub-clause (6) seeks to bring about necessary changes in the definition of "inter-connected undertakings" in clause (g) of section 2 of the Act in the light of the judicial pronouncements requiring the owner of the undertaking to be identified distinctly from the undertaking itself as also in the light of certain interpretations placed by courts on some of the expressions used in that clause. This sub-clause also seeks to incorporate the criterion for determination of control relating to the composition of the Board or the voting power, as one-fourth share in place of the existing criterion of one-third share, as recommended by the Sachar Committee.

Sub-clause (7) seeks to make certain verbal changes in the definition of "monopolistic trade practice" in order to make the intention clear. It also

seeks to incorporate within the definition unfair methods or unfair or deceptive practices.

Sub-clause (8) while defining "notification", also propose to give effect to the recommendation of Sachar Committee for omission of the definition of "monopolistic undertaking". It also seeks to define "owner" of an undertaking as distinct from the undertaking itself.

Sub-clause (9) seeks to omit the definition of "Registrar", because the function of the Registrar would now be discharged by one of the Additional, Joint, Deputy or Assistant Directors General.

Sub-clause (10) seeks to clarify that estimated capital outlay is a part of the scheme of finance.

Sub-clause (11) seeks to clarify that financing and processing would be included within the definition of "service".

Sub-clause (12) seeks to redefine "undertaking" to include not only the undertakings which are currently engaged in economic activity but had for some reasons stopped such activity for the time being or which are in the process of starting such activity. The proposed definition also seeks to clarify that the undertaking would not only be the enterprise itself but all its divisions and units which may be identified in accordance with each of the activities pursued.

Sub-clause (13).—Certain words in the present definition of "value of assets" had created practical difficulties. Accordingly, this sub-clause seeks to omit these words.

Sub-clause (14) seeks to make certain verbal changes to remove interpretative difficulties in the matter of resale price maintenance.

*Clause 4.*—Consequent on the introduction of the definition of "group" in the Act, it is necessary to provide for its determination by the Central Government and also to take power to require the Company Law Board, which is already specialised in such determination, to determine "group" under the Act.

*Clause 5* seeks to exempt co-operative societies from the purview of the Act. It also seeks to clarify that in determining whether an undertaking is owned or controlled by a corporation, shares held by financial institutions shall not be taken into account.

*Clause 6* seeks to remove the bottleneck that may arise owing to the absence of the Chairman in the functioning of the MRTP Commission.

*Clause 7* seeks to empower the Central Government to appoint Director General of Investigation and Registration and as many Additional, Joint, Deputy or Assistant Directors General as may be necessary and to authorise the Central Government to appoint staff of the Commission and to determine the conditions of service of the Director General, etc., and of the staff of the Commission.

*Clause 8* confers the necessary powers on the Director General to make investigation for purposes of inquiry by the Commission.

*Clause 9* seeks to empower the Commission to authorise any other officer of the Commission, other than the Director General, to exercise the same powers as the latter may exercise for the purpose of preliminary investigation.

*Clause 10* seeks to insert three new sections, viz., 12A, 12B and 12C empowering the Commission to exercise the power of granting injunction which is vested in a Civil Court under the Code of Civil Procedure, and to award compensation to any person suffering damage or loss and also to enforce its own orders as if they were a decree or order of the Court.

*Clause 11* seeks to insert a new section 13A empowering the Commission to find out by means of investigation if its orders are being complied with.

*Clause 12* seeks to make some consequential amendments in section 14.

*Clause 13* seeks to clarify that any order passed by a member of the Commission under delegation shall be deemed to be an order of the Commission.

*Clause 14* seeks to make a consequential amendment in section 19.

*Clause 15.*—Because of the use of the words "its own assets" in clause (a) of section 20 of the Act, a plea is often taken by some undertakings that assets which are subject to mortgage or charge, are to be excluded from the total assets for purpose of attracting the Act. This clause, therefore, seeks to omit the word "own" from clause (a) of section 20 and also seeks to make certain verbal changes in clause (b) thereof.

*Clause 16* seeks to incorporate drafting changes consequent upon the introduction of the concept of "owner of an undertaking" as distinct from the "undertaking". It also seeks to make it clear that substantial expansion cannot be totally exempt from the purview of the Act simply because there is some modernisation, replacement, renovation or installation of balancing equipment. This clause seeks to limit substantial expansion involving modernisation, etc., up to twenty-five per cent. of the existing licensed capacity. This, of course, would be in addition to the normal increase in licensed capacity up to (but not including) twenty-five per cent.

*Clause 17* seeks to provide that while a dominant undertaking shall be free to diversify in a line of activity different from the activity in which it is dominant, it cannot without the approval of the Central Government, establish a new undertaking for pursuing the same line of activity. It also seeks to provide that any proposal to manufacture a new article, even in the same undertaking, would amount to establishment of new undertaking. Also, in line with the revised definition of "undertaking", it is proposed to provide that establishing a unit or division would amount to establishment of new undertaking.

*Clause 18.*—The changes proposed in this clause to section 23 of the Act are clarificatory in nature. At present there is no provision in section 23 for approval of the scheme of finance. This clause seeks to introduce necessary provision in section 23. At present, there is some doubt as to the extent of the share capital of the transferee company which must be acquired in order that such acquisition may amount to take over. A suitable *Explanation* is proposed to be provided under section 23 to clarify that acquisition of not less than twenty-five per cent. of the voting power or the acquisition of management would amount to take over.



*Clauses 19, 20 and 21 seek to make certain consequential amendments in sections 24, 25 and 26, respectively.*

*Clause 22.*—At present, the Central Government has the power under section 27 to order division of undertakings. This clause seeks to empower the Central Government to order severance of inter-connection between two or more undertakings. In addition, this clause also seeks to empower the Central Government to acquire undertakings after the order of severance or division and to pay compensation.

*Clause 23 seeks to introduce a new Chapter, namely, Chapter III-A, dealing with restrictions on the acquisition and transfer of shares of, or by, certain bodies corporate. The existing provisions of sections 108A to 108G of the Companies Act, 1956, are proposed to be incorporated in this Chapter. Simultaneously, the corresponding provisions in the Companies Act are proposed to be omitted. It is, of course, proposed not to incorporate the provisions of section 108H of the Companies Act which restrict the provisions for acquisition and transfer of shares only to MRTP companies. Under the provisions, as introduced, any company to which Part A of Chapter III of the Act applies, will be required to obtain approval of the Central Government for acquisition and transfer of shares of MRTP as well as non-MRTP companies.*

*Clause 24 seeks to clarify that for the purpose of invoking, the provisions of section 31 relating to monopolistic trade practices, it is enough if an undertaking is indulging in such practice and it is not necessary that such practice must be indulged in by monopolistic undertaking. It also seeks to empower the Commission to initiate *suo motu* inquiry into any monopolistic trade practice and to report its findings thereon to the Central Government. The other changes proposed in this clause are consequential and incidental.*

*Clause 25 seeks to substitute section 32 to expressly provide that a monopolistic trade practice would be *per se* prejudicial to the public interest except where such practice is permitted by the Central Government in certain cases.*

*Clauses 26 and 30 seek to divide Chapter V into two parts, viz., Part A and Part B, and further seek to insert Part B relating to unfair trade practices.*

Certain well known unfair trade practices like false and misleading advertisements, bargain and switch selling, conducting promotional contests, hoarding and destruction of goods, etc., are proposed to be regulated by the provisions of this new Part added to Chapter V of the Act in the same manner as restrictive trade practices are being regulated at present.

*Clause 27 seeks to amend section 33 to provide that every agreement falling within one or more of the categories specified therein shall be deemed to be an agreement relating to restrictive trade practices and shall be subject to registration under the Act, and also seeks to include in the section certain agreements which shall also be liable to registration.*

*Clause 28 seeks to omit section 34 which has become unnecessary by reason of the provisions of section 8, as sought to be substituted by this Bill.*

*Clause 29 seeks to make a consequential amendment in section 35.*

*Clause 31* seeks to clarify that the section would apply if the practice is a monopolistic practice, whether, or not the undertaking indulging in such practice is a monopolistic undertaking.

*Clause 32* seeks to expand the scope of exceptions which a party can plead in order that a particular restrictive trade practice may be permitted in public interest.

*Clauses 33 and 34* seek to make minor verbal amendments in sections 39 and 43, respectively.

*Clauses 35 to 39* seek to make a consequential amendment in sections 44, 45, 46, 47 and 48, respectively.

*Clause 40* seeks to introduce three new sections, namely, sections 48A, 48B and 48C providing for penalty for wrongfully withholding possession of property in respect of acquisition made by the Central Government under section 27B dealing with division of undertakings and severance of inter-connection and for other offences.

*Clause 41* seeks to amend sub-section (1) of section 49 to change the scope of the penalty provision in respect of non-furnishing of documents and information to the Director General.

*Clause 42* seeks to enlarge the scope of penalty provided in section 50.

*Clause 43.*—At present the Act is silent as to the penalty which should be imposed for the contravention of any condition or restriction imposed while according approval, etc., under section 54. This clause seeks to introduce new sections 52A and 52B for dealing with such contravention and providing a new penalty for suppression of material facts or for making false statement for suppressing of material facts in a document which a party is required to furnish under the Act.

*Clause 44.*—Consequent on the introduction of the new provision under section 2A for the determination of "group" and making of an order by the Commission under new section 36D with regard to unfair trade practice, section 55 of the Act which provides for appeal to Supreme Court, is proposed to be modified to provide for appeal against the orders determining group under sections 2A and 36D, respectively.

*Clause 45* seeks to amend section 56 to confer jurisdiction on the Court of Session for taking cognizance of the offences under the Act.

*Clause 46* seeks to omit section 58.

*Clause 47* seeks to amend section 60 with a view to protecting the non-disclosure of sources of information in certain cases.

*Clause 48* seeks to make a minor verbal amendments in section 61.

*Clauses 49 and 50* seek to make consequential amendments in sections 66 and 67, respectively.

*Clause 51.*—This clause introduces a Schedule for making a necessary provision relating to acquisition of shares or undertakings or part thereof.

*Clause 52* seeks to omit clause (18A) of section 2 and sections 108A to 108H from the Companies Act, 1956.

## FINANCIAL MEMORANDUM

Clause 7 of the Bill seeks to substitute section 8 of the Act to enable the Central Government to appoint a Director General of Investigation and Registration and as many Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration and also the staff of the Commission, as it may think fit.

Clause 22 of the Bill seeks to insert sections 27A and 27B in the Act. Under sub-section (1) of section 27B, as so proposed to be inserted, the Central Government will have power to acquire shares or any undertaking or part thereof which may be necessary for the purpose of causing severance of inter-connection between undertakings.

Clause 23 seeks to insert sections 30A to 30G in the Act. Clause (b) of sub-section (2) of section 30C empowers the Central Government to transfer to itself certain shares of companies engaged in any industry specified in Schedule XIII to the Companies Act, 1956 and to pay the market value of such shares.

The provisions of the Bill with regard to the dominant undertakings and inter-connected undertakings would increase the workload of the Department of Company Affairs. Further, consequent on the introduction of the provisions relating to the transfer of shares with a view to preventing concentration of economic power to the common detriment, some additional workload would devolve on the Department of Company Affairs. The increase in the number of applications to the Central Government under sections 21, 22 and 23 of the Act, as a result of the amendments proposed in the Bill, would also increase the workload of the Department of Company Affairs.

In view of the inclusion in the Bill, of the provisions relating to unfair trade practices, there would be considerable increase in the workload of the Monopolies and Restrictive Trade Practices Commission. Consequently addition to the number of the Members of the Commission and of its staff would be necessary.

The recurring and non-recurring expenditure from the Consolidated Fund of India which would be involved in giving effect to the provisions of the Bill, if it is enacted, and also for meeting the additional expenditure which would be needed for increasing the strength of the Department of Company Affairs and also of the MRTP Commission, would be of the order of Rs. 62,00,000, as detailed below:

1. Recurring expenditure on pay and allowances in the Department of Company Affairs.	Rs. 2,50,000
2. Recurring expenditure on pay and allowances and contingencies in the MRTP Commission.	Rs. 7,00,000
3. Non-recurring expenditure.	Rs. 2,50,000
4. Lumpsum provision for purchase of shares.	Rs. 50,00,000
TOTAL:	Rs. 62,00,000

2. The Bill, if enacted, will not involve any other expenditure of a recurring or non-recurring nature.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3, sub-clause (3), proposes to insert clause (da) in section 2 of the Act. Sub-clause (vii) of the said clause empowers the Central Government to specify, by notification, any other institution as a financial institution for the purposes of the said clause.

2. Clause 5 seeks to insert a new clause (f) in section 3 of the Act. It will enable the Central Government to make the Act applicable to any undertaking owned by a registered co-operative society.

3. Clause 14 seeks to make certain verbal amendments in section 19 of the Act to include unfair trade practices. The manner in which orders made by the Commission in respect of unfair trade practices will be recorded by the Registrar of agreements will also be prescribed by rules, as required by section 19.

4. Clause 18 seeks to amend section 23 of the Act, Clause (b) of sub-section (2), as proposed to be substituted, empowers the Central Government to make rules for prescribing a form for the purpose of the said clause. Sub-section (4), as proposed to be substituted, empowers the Central Government to make rules for prescribing certain matters for the purpose of that sub-section.

5. Clause 23 seeks to insert a new Chapter IIIA consisting of sections 30A to 30G in the Act. Sub-section (1) of section 30C empowers the Central Government to prescribe, by rules, certain particulars for the purposes of that section.

6. Clause 51 seeks to insert a new Schedule in the Act. Sub-paragraph (h) of paragraph 8 of the Schedule empowers the Central Government to make rules relating to the manner in which monies transferred to that Government under the said paragraph may be dealt with.

7. The matters in respect of which the Central Government have been empowered to make rules relate to matters of procedure and detail. The delegation of legislative power is, therefore, of a normal character.

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SUDARSHAN AGARWAL,

*Secretary-General.*